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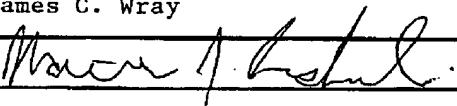
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Application Number	09/396,888
Filing Date	09/16/1999
First Named Inventor	Victor A. Rivas
Art Unit	2644
Examiner Name	Laura A. Grier

Attorney Docket Number

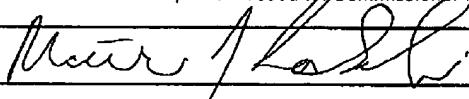
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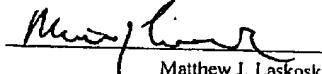
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of

Victor A. Rivas

Serial No. 09/396,888

Art Unit: 2644

Filed: September 16, 1999

Examiner: Laura A. Grier

For: PULSE RATE, PRESSURE AND HEART CONDITION MONITORING GLASSES

APPEAL BRIEF

03/09/2006 MBINAS 00000012 09396888

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REAL PARTY IN INTEREST

Rivas Technologies International, Inc. is the real party in interest in the above-identified case by virtue of an assignment filed January 23, 2004, and recorded on Reel/Frame 014916/0612.

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RELATED APPEALS AND INTERFERENCES

No other related appeals or interferences are pending at this time.

STATUS OF CLAIMS

Claims 30 - 37 were indicated as finally rejected over prior art, however, the Examiner has not indicated the reasons for the rejection of claim 31.

Claims 2 - 4, 6 - 27 and 29 have been allowed.

Claims 1, 5 and 28 have been cancelled without prejudice.

A copy of the appealed claims is appended hereto in the CLAIMS APPENDIX.

STATUS OF AMENDMENTS

Amendments proposed after the final Office Action were entered pursuant to an Advisory Action dated January 30, 2006.

SUMMARY OF CLAIMED SUBJECT MATTER

The present invention is a heart condition monitoring apparatus. The heart condition monitoring apparatus includes a pair of glasses 1 (See, for example, Figure 1 and specification page 2, lines 21 - 22), a plurality of light emitting diodes 21 on the glasses for emitting light onto a surface (See, for example, Figure 1 and specification page 3, lines 2 - 3), a plurality of photosensors 25 on the glasses for receiving reflected light (See, for example, Figure 1 and specification page 3, lines 3 - 6), electronic circuitry 13 on the glasses 1 and connected to the plurality of photosensors 25 for receiving signals from the plurality of photosensors 25 (See, for example, Figure 1 and specification page 3, lines 11 - 14), and a power source 17 on the glasses 1 and connected to the plurality of light emitting diodes 21, the plurality of photosensors 25 and the electronic circuitry 13 for providing power (See, for example, Figure 1 and specification page 3, line 1).

The plurality of photosensors 25 is positioned in a plane offset from the plane of light emission from the light emitting diodes 21 (See, for example, Figure 1 and specification page 3, lines 3 - 5).

A transmitter 19 is located on the glasses 1 and connected to the circuitry 13 for transmitting signals from the circuitry to a remote receiver 41 (See, for example, Figure 1 and specification page 4, lines 17 - 19).

A display on lenses 11 of the glasses 1 for indicates the sensed condition of a user (See, for example, specification page 3, lines 24 - 26). 4. The display is a numerical display for indicating the user's heart rate and pulse rate (See, for example, specification page 3, lines 24 - 26 and page 4, lines 3 - 4).

At least one button is found on the glasses for inputting the user's information (See, for example, specification page 3, lines 20 - 23).

The power source 15, 17 is selected from the group consisting of batteries, solar cells, and combinations thereof (See, for example, specification page 3, line 1).

The present invention is also a method of monitoring heart condition. The method includes providing a pair of glasses (See, for example, Figure 1 and specification page 2, lines 21 - 22), emitting light onto a surface of a user by a plurality of light emitting diodes on the glasses (See, for example, Figure 1 and specification page 3, lines 2 - 3), receiving reflected light by a plurality of photosensors on the glasses (See, for example, specification page 3, lines 7 - 10), determining changes in the amount of reflected light received by the photosensors (See, for example, specification page 3, lines 7 - 19), transmitting a signal corresponding to the change in reflected light from the photosensors to circuitry on the glasses (See, for example, specification page 3, lines 7 - 19), and determining a user's condition by measuring changes in the signals received by the circuitry (See, for example, specification page 3, lines 7 - 19).

GROUNDS OF REJECTION

Claims 30, 32 and 37 stand rejected under 35 U.S.C. 102(e) as being anticipated by Fukushima et al. (U.S. Patent No. 6,123,661).

Claims 33, 34 and 36 stand rejected under 35 U.S.C. 103(a) as being obvious over Fukushima et al. (U.S. Patent No. 6,123,661) in view of Ryll (U.S. Patent No. 5,813,990).

Claim 35 stands rejected under 35 U.S.C. 103(a) as being obvious over Fukushima et al. (U.S. Patent No. 6,123,661) in view of Mathews (U.S. Patent No. 5,431,170).

ARGUMENTS

Allowance of all claims is requested. All of the claims distinguish the invention from the references.

Claims 30, 32 and 37 are patentable under 35 U.S.C. 102(e) over Fukushima et al. (U.S. Patent 6,123,661).

Claim 30 describes a heart condition monitoring apparatus, comprising a pair of glasses; a plurality of light emitting diodes on the glasses for emitting light onto a surface; a plurality of photosensors on the glasses for receiving reflected light; electronic circuitry on the glasses and connected to the plurality of photosensors for receiving signals from the plurality of photosensors; and a power source on the glasses and connected to the plurality of light emitting diodes, the plurality of photosensors and the electronic circuitry for providing power.

Fukushima is a new reference cited by the Examiner in a Final Office Action dated October 7, 2005. Fukushima was not previously cited by the Examiner.

Fukushima does not teach a heart condition monitoring apparatus. Instead, Fukushima is a combination massage and relaxation chair. The photosensors and light emitting diodes of Fukushima merely function to detect rates of blinking of a user for the purpose of saving power. The photosensors and light emitting diodes of the Applicant's invention are sophisticated and allow the apparatus to monitor heart conditions of the user. Fukushima does not anticipate the Applicant's invention.

Nowhere in Fukushima is there evidence of electronic circuitry on the glasses and connected to the plurality of photosensors for receiving signals from the plurality of photosensors as indicated in claim 30 of the Applicant's invention.

Furthermore, there is no explicit power source "on the glasses" and "connected to the plurality of light emitting diodes, the plurality of photosensors and the electronic circuitry" as required in claim 30. The Examiner cites Fukushima column 6, lines 12 - 15 as teaching the limitations of claim 30. However, Fukushima does not disclose that the power supply is found on the glasses.

As such, Fukushima does not teach all the limitations of claim 30. Claim 30 is patentable over Fukushima.

Claim 32 adds a transmitter on the glasses and connected to the circuitry for transmitting signals from the circuitry to a remote receiver to the patentable features of claim 30. Fukushima does not specifically mention a transmitter for connecting circuitry to a remote receiver. Therefore, claim 32 is patentable over Fukushima.

Claim 37 teaches a method of monitoring heart condition, comprising providing a pair of glasses; emitting light onto a surface of a user by a plurality of light emitting diodes on the glasses; receiving reflected light by a plurality of photosensors on the glasses; determining changes in the amount of reflected light received by the photosensors; transmitting a signal corresponding to the change in reflected light from the photosensors to circuitry on the glasses; and determining a user's condition by measuring changes in the signals received by the circuitry.

Fukushima does not teach a heart condition monitoring apparatus. Instead, Fukushima is a combination massage and relaxation chair. The photosensors and light emitting diodes of Fukushima merely function to detect rates of blinking of a user for the purpose of saving power.

The photosensors and light emitting diodes of the Applicant's invention are sophisticated and allow the apparatus to monitor heart conditions of the user. Fukushima does not anticipate the Applicant's invention.

Nowhere in Fukushima is there mention of transmitting a signal corresponding to the change in reflected light from the photosensors to circuitry on the glasses as required in claim 37. Therefore, claim 37 is patentable over Fukushima.

The present claims are patentable under 35 U.S.C. 103.

In considering the patentability of the present invention, it is requested that the Board consider the invention as a whole, consider the scope and content of the prior art as a whole, consider the differences between the claims at issue and the prior art, and consider the level of ordinary skill in the art to which the invention pertains at the time the invention was made.

Graham v. John Deere Co., 148 USPQ 459, 467 (1966).

THE INVENTION AS A WHOLE

The invention considered as a whole is best described by the appended claims.

PRIOR ART AS A WHOLE

The prior art to which the invention pertains is typified by the references of record.

DIFFERENCES BETWEEN THE INVENTION AND THE PRIOR ART

Each of the present claims defines unique features and each is individually patentable over the prior art.

The test in reviewing rejections under 35 U.S.C. 103 in which the examiner has relied on teachings of several references, is whether references, viewed individually and collectively, would have suggested claimed invention to a person possessing ordinary skill in the art, and citing references which merely indicate that isolated elements and/or features recited in the claims are known is not a sufficient basis for concluding that combination of the claimed elements would have been obvious. Ex parte Hiyamizu, 10 USPQ2d 1393-1395 (Board of

Patent Appeals and Inter., 1988); In re Kaslow, 217 USPQ 1089 (Fed. Cir. 1983); In re Deminski, 230 USPQ 313 (Fed. Cir. 1986).

Claims 33 – 34 and 36 are patentable under 35 U.S.C. 103(a) as being non-obvious over Fukushima et al. (U.S. Patent No. 6,123,661) in view of Ryll (U.S. Patent No. 5,813,990).

The present claims particularly point out new and unobvious features of the invention which are not found in any reference and which would not have been obvious from the references. Nothing in each of the references teaches or suggests the claimed features. Therefore, the references cannot anticipate nor render obvious the present invention as claimed.

Claims 33 and 34 are patentable over Fukushima in view of Ryll. Claim 33 adds to the patentable features of claim 30 a display on lenses of the glasses for indicating the sensed condition of a user. Claim 34 adds to the patentable features of claim 33 that the display is a numerical display for indicating the user's heart rate and pulse rate. These patentable features are not found in the cited references.

As indicated by the Examiner, Fukushima does not indicate a sensed condition to the user. Ryll teaches a pair of sports goggles with information feedback. It would not have been obvious to one of ordinary skill in the art at the time of the invention to combine the sports goggles of Ryll with the massage chair of Fukushima. The two inventions are used for very diverse purposes. Therefore, claims 33 and 34 are patentable over Fukushima in view of Ryll.

Claim 36 adds to the patentable features of claim 30 that the power source is selected from the group consisting of batteries, solar cells, and combinations thereof. As indicated by the Examiner, Fukushima does not disclose batteries or solar cells as a power supply. Ryll does not disclose solar cells as a power source. It would not have been obvious to one of ordinary skill in

the art at the time of invention to combine Fukushima with Ryll. Therefore, claim 36 is patentable over Fukushima in view of Ryll.

Claim 35 is patentable under 35 U.S.C. 103(a) over Fukushima et al. (U.S. Patent 6,123,661) in view of Mathews (U.S. Patent 5,431,170).

Claim 35 adds to the patentable features of claim 30 at least one button on the glasses for inputting the user's information.

Mathews relates to a headband with a wristband readout device. The headband worn against the forehead of a user has a pulse rate meter with sensors for determining pulse rate and blood oxygen levels. A short-wave radio communication transmits signals from the sensor on the forehead to the display on the wrist. It is not understood how Mathews could have anything to do with the claimed invention or with Fukushima.

It would not have been obvious to one of ordinary skill in the art at the time of the invention to combine Fukushima with Mathews. The two inventions are unrelated. There is no motivation in either reference that would suggest combination.

Therefore, claim 35 is patentable over Fukushima in view of Mathews.

LEVEL OF ORDINARY SKILL IN THE ART

A person having ordinary skill in the art is an artisan being taught the reference teachings.

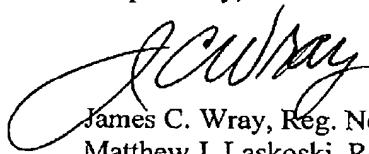
SUMMARY

When considering the present invention as a whole and the prior art to which the invention pertains as a whole, when considering the differences between the present invention and the prior art, and when considering the level of ordinary skill in the art to which the invention pertains, it is clear that the invention would not have been obvious under 35 U.S.C. 103 to a person having ordinary skill in the art at the time the invention was made.

CONCLUSION

Reversal of the Examiner and allowance of all the claims are respectfully requested.

Respectfully,



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Date: March 8, 2006

CLAIMS APPENDIX**Appealed Claims:**

2. The apparatus of claim 7, wherein the power source is a battery.
3. The apparatus of claim 7, wherein the power source is at least one solar cell.
4. The apparatus of claim 3, further comprising:
a battery as a back-up power source to the at least one solar cell.
6. The apparatus of claim 7, further comprising a transmitter on the glasses and connected to the circuitry for transmitting signals from the circuitry to a remote receiver.
7. Heart condition monitoring apparatus, comprising:
a pair of glasses;
a plurality of light emitting diodes on the glasses for emitting light onto a surface;
a plurality of photosensors on the glasses for receiving reflected light;
electronic circuitry on the glasses and connected to the plurality of photosensors for receiving signals from the plurality of photosensors;
a power source on the glasses and connected to the plurality of light emitting diodes, the plurality of photosensors and the electronic circuitry for providing power; and
wherein the plurality of photosensors are positioned in a plane offset from the plane of light emission from the light emitting diodes,
further comprising a plurality of lamps on the pair of glasses for indicating a sensed condition of a user.
8. The apparatus of claim 7, further comprising a display on lenses of the glasses for indicating the sensed condition of a user.

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9. The apparatus of claim 7, wherein the display is a numerical display for indicating the user's heart rate and pulse rate.

10. The apparatus of claim 7, further comprising at least one button on the glasses for inputting the user's information.

11. Heart condition monitoring apparatus, comprising:

a pair of glasses;

a plurality of light emitting diodes on the glasses for emitting light onto a surface;

a plurality of photosensors on the glasses for receiving reflected light;

a plurality of electrodes positioned on a user's body for determining heart rate;

a sensor on the user's wrist for determining pulse rate;

a receiver on the glasses for receiving signals from the plurality of photosensors, from the plurality of electrodes and from the sensor; and

a power source connected to the glasses for providing power to the plurality of light emitting diodes, the plurality of photosensors and the receiver.

12. The apparatus of claim 11, further comprising:

a display on the lenses of the glasses for displaying signals transmitted by the receiver indicating a sensed condition of the user.

13. The apparatus of claim 12, wherein the display is a numerical display for indicating the user's pulse rate and heart rate.

14. The apparatus of claim 11, further comprising:

a plurality of lamps on the glasses for indicating the sensed condition of the user.

15. The apparatus of claim 11, wherein the sensor is connected to a watch.

16. The apparatus of claim 11, wherein the plurality of photosensors are positioned in a plane offset from the plane of light emission from the light emitting diodes.
17. The apparatus of claim 11, wherein the power source is a battery.
18. The apparatus of claim 11, wherein the power source is at least one solar cell.
19. The apparatus of claim 18, further comprising:
 - a battery as a back-up power source to the at least one solar cell.
20. The apparatus of claim 15, further comprising a radio transmitter on the watch for transmitting signals from the sensor to the receiver.
21. The apparatus of claim 11, wherein the receiver is a signal discriminator chip.
22. A method of monitoring heart condition, comprising:
 - providing a pair of glasses;
 - emitting light onto a surface of a user by a plurality of light emitting diodes on the glasses;
 - receiving reflected light by a plurality of photosensors on the glasses;
 - determining changes in the amount of reflected light received by the photosensors;
 - transmitting a signal corresponding to the change in reflected light from the photosensors to circuitry on the glasses;
 - determining a user's condition by measuring changes in the signals received by the circuitry,
 - placing a sensor on the user's wrist;
 - sensing the user's pulse rate by the sensor; and
 - transmitting the pulse rate signal from the sensor to the circuitry on the glasses.
23. The method of claim 22, further comprising

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inputting target conditions to the circuitry;
comparing the sensed condition to the target condition; and
indicating to the user the relation between the sensed condition and the target condition.

24. The method of claim 23, wherein the indicating to the user comprises displaying a lighted display on the lenses of the glasses.

25. The method of claim 23, wherein the indicating to the user comprises displaying a numerical display on the lenses of the glasses.

26. The method of claim 22, further comprising:
sending the signal from the circuitry to a transmitter;
sending the signal from the transmitter to a remote receiver;
sending the signal from the remote receiver to a home computer;
determining if the sensed condition exceeds the user's inputted target condition; and
sending the signal from the home computer to a doctor's office through the Internet when the sensed condition exceeds the target condition.

27. The method of claim 22, further comprising:
sending the signal from the circuitry to a transmitter;
sending the signal from the transmitter to a home computer;
determining if the sensed condition exceeds the user's inputted target condition by the home computer; and
dialing an emergency service by the home computer when the sensed condition exceeds the target condition.

29. The method of claim 22, further comprising:
placing a plurality of electrodes on the user;

sensing the user's heart rate through the plurality of electrodes; and
transmitting the heart rate signal from the plurality of electrodes to the circuitry on the
glasses.

30. Heart condition monitoring apparatus, comprising:
 - a pair of glasses;
 - a plurality of light emitting diodes on the glasses for emitting light onto a surface;
 - a plurality of photosensors on the glasses for receiving reflected light;
 - electronic circuitry on the glasses and connected to the plurality of photosensors for receiving signals from the plurality of photosensors; and
 - a power source on the glasses and connected to the plurality of light emitting diodes, the plurality of photosensors and the electronic circuitry for providing power.
31. The apparatus of claim 30, wherein the plurality of photosensors are positioned in a plane offset from the plane of light emission from the light emitting diodes.
32. The apparatus of claim 30, further comprising a transmitter on the glasses and connected to the circuitry for transmitting signals from the circuitry to a remote receiver.
33. The apparatus of claim 30, further comprising a display on lenses of the glasses for indicating the sensed condition of a user.
34. The apparatus of claim 33, wherein the display is a numerical display for indicating the user's heart rate and pulse rate.
35. The apparatus of claim 30, further comprising at least one button on the glasses for inputting the user's information.
36. The apparatus of claim 30, wherein the power source is selected from the group consisting of batteries, solar cells, and combinations thereof.

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37. A method of monitoring heart condition, comprising:

 providing a pair of glasses;

 emitting light onto a surface of a user by a plurality of light emitting diodes on the glasses;

 receiving reflected light by a plurality of photosensors on the glasses;

 determining changes in the amount of reflected light received by the photosensors;

 transmitting a signal corresponding to the change in reflected light from the photosensors to circuitry on the glasses; and

 determining a user's condition by measuring changes in the signals received by the circuitry.

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EVIDENCE APPENDIX

No additional evidence.

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RELATED PROCEEDINGS APPENDIX

There are no related proceedings.

APP C 1

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